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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,811	04/06/2001	Theodore Van Fossen McConnell	8240M&	6863

27752 7590 03/11/2004

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

KRAMER, JAMES A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/827,811

Applicant(s)

MCCONNELL ET AL.

Examiner

James A. Kramer

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-97 is/are pending in the application.
- 4a) Of the above claim(s) 41-82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 and 83-97 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

DETAILED ACTION

*Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-40 and 83-97, drawn to system and method for comparing inventory velocity to a baseline, classified in class 705, subclass 28.
- II. Claims 41-58, drawn to a system and method for determining the cause of an out-of-stock condition, classified in class 705, subclass 7.
- III. Claims 59-82, drawn to a system and method for determining the customer impact of an out-of-stock condition, classified in class 705, subclass 10.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as determining the velocity of an item through an establishment can be used for other, diverse applications, such ordering items. See MPEP § 806.05(d).

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as determining the velocity of an item can be used in situations that do not include out-of-stock conditions and therefore would be useable separately from the invention of III. See MPEP § 806.05(d).

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be

separately usable. In the instant case, invention II has separate utility since determining the cause of an out-of-stock condition helps to prevent such a condition, whereas determining customer impact of an out-of-stock condition merely allows you to understand the financial impact but does not lend itself to actual correction/modification. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group III, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group III, restriction for examination purposes as indicated is proper.

During a telephone conversation with Eric Hemm on February 27, 2004 a provisional election was made without traverse to prosecute the invention of I, claims 1-40 and 83-97. Affirmation of this election must be made by applicant in replying to this Office action. Claims 41-82 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 12, 15-18, 20-23, 32-37, 83-87 and 91-94 are rejected under 35

U.S.C. 102(b) as being anticipated by Graves et al.

Graves et al. teaches an inventory management method and apparatus. Graves et al. teaches a processing unit with a plurality of communication means (column 5; lines 1-4) and sensors to measure quantities of goods in storage (column 5; lines 28-37). The processing unit receives usage data and is able to determining the rate at which a good is used. This determined rate is stored in a database to produce a historical record of consumption (probability pattern of velocity) (column 6; lines 36-45).

Graves et al. further teaches the use of forecasting algorithms, such as the quantity of a good used over a predetermined period of time so that the amount of the good used during a future predetermined time period can be estimated (column 6; lines 50-55).

Graves et al. also teaches the inventory management system compares the projected usage level to actual usage levels. If a significant disparity arises the system determines if a loss product level will occur or the inverse (occurring too slowly or occurring too quickly) (column 11; lines 1-9).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves et al. in view of Official Notice.

Graves et al. as described in detail above does not specifically mention the inventory management method and apparatus being applied to a retail establishment. Graves et al. does teach the use of the system for goods such as headlights and that using the system any consumable supply could be monitored based on historical rate at which the supplies are consumed. Examiner takes Official Notice that it is old and well known that retail point of sales sell consumable supplies. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the inventory management method and system of Graves et al. to include a retail point of sale in order to monitor the inventory of consumable supplies at those locations.

Claims 19, 24-30, 38-40, 88-90 and 95-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves et al. in view of Official Notice.

Graves et al. as discussed above does not specifically mention a forecasting algorithm used by the inventory management method and apparatus. Examiner takes Official Notice that the Poisson statistical model is old and well known for determining the probability to an occurrence (i.e. forecasting algorithm) and further lambda and alpha are known variables within this model.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the forecasting algorithm of Graves et al. to include the Poisson

statistical model in order to utilize a known and respected model for determining the usage of a good in the future.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (703) 305-5241. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (703) 305-4716. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James A. Kramer  
Examiner  
Art Unit 3627

JAK

  
Richard Chilcot  
Supervisory Patent Examiner  
Technology Center 2623  
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